years, up to the termination of his sentence. The death of the offender does not discharge the fine, but any property legally liable for his debts is liable also for his fine[9]. (Section 70.)

SECTION II.—CONFISCATION AS A PUNISHMENT UNDER FOREST LAW.

§ 1.—*Two Subjects included.*

The Forest law has made a necessary addition to the ordinary list of criminal penalties under the head of *confiscation*[10].

In the Forest Act this subject is dealt with in sections 52-60. (B. *id.*)

In the section alluded to, not only is *confiscation* as a penalty, and properly so called, included, *but also the case* where property connected with a forest case, probably obtained by the commission of an offence, is either produced at the trial along with the offender, or is discovered lying in the forest, the actual offender who cut or prepared it for removal not being known or arrested.

It is obvious that in these latter cases there is nothing in the nature of *confiscation* properly so called. The property never belonged to the wrong-doer in whose hands it was seized, nor to the person (whoever he may be) who cut it and left it lying.

§ 2.—*Procedure.*

As the procedure is the same, or at all events is analogous, in both cases, the whole subject is dealt with in the Forest Acts in the same chapter.

Where any forest produce appears to have been the subject of an offence punishable under the Forest Act, the first thing to be done is to make a formal "seizure," which may (section 52) be effected by any Forest or Police Officer. The fact of seizure is indicated by putting *a mark* (section 53, usually the "broad arrow") and a report has at once to be made to the Magistrate who would have jurisdiction to try the offence.

[9] But it may be a question whether the *procedure* of *recovery* by distraint and sale can be applied after death.

[10] The French law is similar. Seizure may be made of all cattle, tools, carts, &c., "*trouvés en délit*" (C. F., 161), and all illicitly obtained produce may be ordered to be restored (*restitué*), for there is no real confiscation in such cases (C. F., 198): tools of all kinds can be confiscated, but not animals nor carts.

If there is an offender connected with the case, and he is not arrested on the spot, the Magistrate will take the necessary steps for his arrest and trial. At the close of the trial, if the property appears to be Government property, the Magistrate will order its restoration, and the Forest Officer will take charge (section 55), or he may order any other disposal that he thinks right[1]; and if the property belonged to the offender, the Magistrate may order its confiscation, in addition to any other penalty, under section 54. If there is no offender, or none can be found, the Magistrate enquires into the cause of seizure, and if he finds that the property has been obtained by the commission of a forest offence, he can order its restoration, or order its delivery to any person he deems entitled to it[2].

But it will often happen that though the actual offender is not traced[3] some person is known or believed to be concerned with or interested in the produce seized, then notice should be issued to

[1] So also under the Criminal Procedure Code, section 517. Here also, it is not necessary that the accused should be convicted. As long as *any* offence appears *to have been* committed with regard to the property produced, the court may pass orders for its disposal. The section only speaks of property produced before the Court. And the property need not be in the original state in which it was before the offence; the property dealt with may be the result of melting up, fashioning or altering the original.

The procedure in section 51 of the forest law and section 523 of the Criminal Procedure Code are very similar. But there are so many peculiarities in forest cases, that it is better to provide specifically for the subject in the Forest Act.

[2] In these cases, of course, it is difficult to say who it belongs to, because there is appearance of an offence but none as yet proved. The Forest Act, therefore, facilitates the enquiry by laying down that where wood is seized in this way, the Court shall start with a presumption that the wood belongs to Government: then any one else who (as will afterwards be stated) was found to object to this seizure is properly put to prove his title against that *primâ facie* presumption. (Act, section 68, B. 67.)

[3] In the Burma timber frauds in 1872 large quantities of teak logs were found in the forests, obtained fraudulently under colour of a permit or lease to cut certain teak trees. No one was put in charge, nor could it in all cases be ascertained who actually cut them. But it is believed or known that a Company, the holder of the permits, was interested in the timber; consequently, a notice was issued to them on the seizure of the timber, to show cause why it should not be made over to the Government officers. In those days the Act of 1865 was in force, under which all such proceedings were spoken of as "confiscation." It is obvious, however, that in such a case there was no confiscation, as the property was in fact stolen from Government and never was lawfully the property of the Company at all.

such person, or a general public notice issued and one month's delay allowed, during which any person may be heard and may offer evidence against the seizure: no order is passed till the month has expired (section 56).

If the property is such that will not keep or will deteriorate, it may be sold by the Magistrate's order, and the money proceeds will be kept or dealt with in the same way as the property itself. (Section 57.)

§ 3.—*Distinction explained.*

It is hoped that the student will have fully mastered the distinction between sections 54, 55, 56.

In actual practice, cases of *confiscation* are not common, for the property must be that of the wrong-doer, only that some offence has been committed in respect of it: for example, he has lawfully obtained 300 poles of teak, but he has smuggled them by a forbidden route, to evade the pass regulations: here the *property* is the offender's, lawfully enough; if therefore the property is taken from him as a penalty for the smuggling, that is *confiscation*, properly so called; so if his cart, axes, or cattle were taken, as used in committing the offence; but it is to these cases *only* that section 54 applies. Far more commonly, what happens is this, that a person commits an offence, and he is caught, and with him a large quantity of wood, &c., *wrongfully* cut or removed; here, at the close of the trial (section 55), the Magistrate will simply *order* the stuff to be given back to the Forest Officer; there is no *confiscation*, because the wood never was the property of the offender at all. It is the same with section 56; the Forest Officer may come across a lot of Government timber lying in the forest, but the offender has heard of his approach, and has left it and fled: here of course he must get a Magistrate's order to dispose of the property, although no offender is caught; but it is no *confiscation*, only a restoration of the property to Government, from whose possession it was wrongfully removed.

§ 4.—*Mixture of Property.*

A very common case is where, when the property is seized, it is found to be a mixture. For example, a man has a 'permit' to collect dry and fallen wood, and to stack it for removal; he nefariously cuts a lot of green wood, and mixes the billets with the dry in the stacks: here, as a forest offence has been committed in respect of some of the wood, it can be seized: the Forest Officer would be justified in at once separating the green from the dry and seizing the green; or, if he could not make the separation, he might fairly seize the whole[4].

But it will be clear that in regard to such stacks no order of *confiscation* is passed. Section 54 does not apply; section 55 does. The trial being over, the Magistrate would simply pass an order that the green wood was to be restored to Government, and the dry given back to the accused.

The dry wood could not be *confiscated*, it will be observed, for no offence has been committed in respect of *it*. It was lawfully enough obtained, and never would have been seized at all, but that it was mixed with other stuff that *was* liable to seizure, and it was at once separated (unless such separation proved impracticable). The green wood would also not be the subject of *confiscation*, for it has never become the property of the thief, and can only be *restored* to Government. In such cases the only order that can be legally passed would be at the close of the trial (1) to separate the material, restoring each kind to each person, (2) to sell the whole and allot a fair value out of the proceeds to the parties[5].

[4] No doubt it will be convenient that the Act should be amended so as to specify this case; but I think even now, on general principles of justice, the Courts would so decide. If, a thief, by his own wrongful act, so mixes up what is his own with what is stolen, he certainly could not complain if the whole were seized, and even in the end the Magistrate would be justified in restoring the whole lot to the forest officer, unless the prisoner could prove what was his, and there was some special equitable way of adjusting the respective value of the part that was not stolen, as, for example, if the stolen wood were only a very small part of the entire heap.

[5] And naturally, the value of the wood restored to prisoner could be attached by the Court in liquidation of any fine or compensation ordered to be paid.

§ 5.—*Appeal.*

From any order of disposal after trial, or disposal where no offender has been found, there is an appeal, either on the part of the Forest Department, or of the offender, or person interested in the property seized (section 58). One month is allowed for the appeal.

In the case of confiscated property after the appeal has been heard, or after the period of appeal has elapsed, the confiscated property vests absolutely and free of incumbrances in the Government (section 59).

§ 6.—*Release of Property seized.*

Under section 60, the Local Government may empower any officer to direct the immediate release of property seized. This will enable errors to be corrected at once without putting the person interested to the trouble and expense of a trial or appeal[6].

This power, coupled with the liability of Police and Forest Officers to be prosecuted for "vexatious or unnecessary" seizures are ample safeguards against any abuse of the powers given by this Chapter, which otherwise are obviously necessary for the safety of Government and other forest property.

[6] In the North-Western Provinces, Government has empowered all Conservators and Deputy Conservators to exercise this power; but this was hardly intended, for it is obvious that if a subordinate made a seizure, and his official superiors thought the seizure unnecessary or undesirable, they could order its release and refuse to proceed, in the ordinary course of their official duty as controlling officers without any special power. What is meant is that the Commissioner or other such superior Civil or police authority should be vested with power to summarily interfere and stop the proceedings if he thought the seizure unwarrantable.

It is in connection with these proceedings that under section 32, a Police Officer or Forest Officer is threatened with punishment for a vexatious or altogether unnecessary seizure.